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May 10, 2021

VIA ECF

Honorable Mary Kay Vyskocil
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 2230
New York, New York 10007

Re: Goureau, et al. v. Marcus Lemonis, et al., Case No. 1:20-cv-04691-MKV

Honorable Judge Vyskocil:

We represent Defendants Marcus Lemonis (“Lemonis”), ML Retail, LLC (“ML Retail”), and Marcus Lemonis, LLC (collectively, the “ML Defendants”) in the above-referenced action brought by Nicolas Goureau (“Goureau”) and Stephanie Menkin (“Menkin”) (collectively “Plaintiffs”) against the ML Defendants and Machete Corporation (“Machete”) (collectively “Defendants”).¹ We submit this letter to briefly respond to Plaintiffs’ May 10, 2021 letter (Dkt. No. 59), which is another improper supplemental filing by Plaintiffs made without leave of this Court, following a similar filing on March 30, 2021 (Dkt. No. 57).

The Order entered in a separate action in Cook County, Illinois (the “Cook County Action”) has no bearing on this action or on the pending motions to dismiss. Among other things, the Cook County Action included additional parties not part of this action—ML Fashion, LLC (“ML Fashion”) on the plaintiff’s side, and Noemi Goureau on the defendants’ side—and did not include as parties Lemonis, Marcus Lemonis, LLC, Machete, or, most importantly, nominal defendant Gooberry Corp., which is a party to the agreements with mandatory forum selection clauses requiring claims to be brought in Illinois. *See* Dkt. No. 59-2. The Cook County Action also involved different facts and causes of action than those at issue in this Court, namely claims by ML Fashion and ML Retail *against* Plaintiffs, together with their mother Noemi Goureau, for misappropriation of funds and other assets of ML Fashion and ML Retail. *See id.*

In this action, by contrast, Plaintiffs are purporting to sue on behalf of an entity, Gooberry Corp., *that is a party to the agreements with mandatory forum selections clauses*. Dkt. No. 54 1-3. Plaintiffs’ causes of action are also expressly related to, and their Complaint attaches, those agreements, which Plaintiff Menkin herself signed on Gooberry Corp.’s behalf. *See* Dkt. No. 45 6-8; Dkt. No. 54 1-3. The court in the Cook County Action certainly did *not* hold that it would not have jurisdiction to hear claims brought *by* Plaintiffs *against* the ML Defendants under those circumstances, which was not an issue before that court. The Order in the Cook County Action (based on very different underlying facts, parties, and causes of action) does not change the fact that the

¹ Machete is represented by separate counsel.



Honorable Mary Kay Vyskocil
May 10, 2021
Page 2

mandatory forum selection clauses are applicable to, and binding on, Plaintiffs' claims in this action. Nor does the Order in the Cook County Action have any bearing on the ML Defendants' arguments that Plaintiffs' claims here are barred by the economic loss doctrine or are otherwise not adequately pled. Dkt. No. 45 10-25; Dkt. No. 54 5-10.

For the foregoing reasons, the ML Defendants respectfully submit that the Order in the Cook County Action has no bearing on the ML Defendants' motion to dismiss (Dkt. No. 44), or on their request for leave to file a motion to transfer venue (Dkt. No. 43). Accordingly, the Court should disregard Plaintiffs' inappropriate supplemental filing.

Respectfully submitted,
SEYFARTH SHAW LLP
/s/ Michael D. Wexler
Michael D. Wexler

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